

No. 15864 ✓

United States
Court of Appeals
for the Ninth Circuit

CITY OF ANCHORAGE, a Corporation,
Appellant,
vs.
WILLIAM A. HILTON,
Appellee.

Transcript of Record

Appeal from the District Court
for the District of Alaska,
Third Division

FILED

MAR 12 1958



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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DONALD A. BURR,
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Anchorage, Alaska,
For the Appellee.

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In the District Court for the District of Alaska,
Third Division

No. A-13,425

CITY OF ANCHORAGE, a Municipal Corporation,
Plaintiff,

vs.

WILLIAM A. HILTON,

Defendant.

AGREED STATEMENT AS
RECORD ON APPEAL

Inasmuch as the question presented by the appeal of the City of Anchorage to the United States Court of Appeals for the Ninth Circuit in the above-entitled cause can be determined without examination of all the pleadings, evidence and proceedings in the District Court, the parties have prepared and signed this statement of the case showing how the questions arose and were decided in the District Court, and setting forth only so much of the facts offered and proved or sought to be proved as are essential to the decision of the question by the Court of Appeals. The following stipulation of facts was made between the parties to this action and will serve as properly presenting the questions for determinations by the Court of Appeals. That statement of facts agreed on below was essentially the same as the following adopted as the agreed statement of facts for purposes of appeal and is as follows:

Plaintiff is a municipal corporation, organized and existing by virtue of the laws of the Territory of Alaska. The defendant is now, and at all times herein mentioned has been, the duly appointed, qualified and acting Clerk of the United States District Court for the District of Alaska, Third Judicial Division.

One Samuel Austin was tried and convicted on the 6th day of July, 1956, in the Magistrate's Court for the City of Anchorage for a violation of the ordinances of said city, and therein was fined the sum of One Hundred and Fifty Dollars (\$150.00); that thereafter, according to the statutory authority, he gave verbal notice of appeal from said judgment to the United States District Court for the District of Alaska, Third Judicial Division; that on the 6th day of July, 1956, pursuant to said notice of appeal, the said City Magistrate filed a complete transcript of the cause against said Samuel Austin in the office of the Clerk of the United States District Court for the District of Alaska, Third Judicial Division, Anchorage, Alaska; that thereafter said cause came on for hearing in the said District Court pursuant to the provisions of Section 16-1-70 and Sec. 68-9-10 ACLA 1949. The case was prosecuted by the attorney for the City of Anchorage.

That on the 10th day of September, 1956, the said District Court found the said Samuel Austin guilty of the charge of violating the ordinances of the City of Anchorage and imposed a fine upon him of One Hundred Dollars (\$100.00). Formal Judgment, ad-

judging the said Samuel Austin guilty and imposing such fine was signed by the judge of said District Court and entered in the records of said court on the 18th day of September, 1956.

On or about the 15th day of September, 1956, the said Samuel Austin deposited or caused to be deposited in the office of the Clerk of the District Court the sum of One Hundred Dollars (\$100.00) in full payment of the fine so imposed upon him by the said District Court.

The plaintiff, City of Anchorage, thereafter demanded that the defendant remit or pay to the City of Anchorage the fine of One Hundred Dollars (\$100.00) so imposed by the District Court on the aforementioned defendant. The clerk of the court refused and continues to refuse to pay the sum or any part thereof to the plaintiff, City of Anchorage. Thereafter an opinion was filed in this cause on the 4th day of October, 1957, which opinion was as follows:

[Title of District Court and Cause.]

No. A-13,425

OPINION

This case is brought before the court upon the following stipulated facts.

The Magistrate's Court of the City of Anchorage convicted Samuel Austin of the crime of indecent exposure, in violation of a municipal ordinance, and

Dated at Anchorage, Alaska, this 1st day of October, 1957.

/s/ J. L. McCARREY, JR.,
U. S. District Judge.

Thereafter, the defendant submitted a judgment in accordance with the opinion. Said judgment was as follows:

[Title of District Court and Cause.]

No. A-13,425

JUDGMENT

The above-entitled cause came on regularly for trial before the Court, and was duly submitted for consideration by way of briefs by both plaintiff and defendant, and the Court, after due deliberation, rendered its opinion on the 1st of October, 1957, incorporating therein appropriate findings of fact and conclusions of law in lieu of separately stating same under the provisions of Rule 52 FRCP.

Now, therefore, pursuant to said opinion, it is determined and ordered that plaintiff's cause of action be and the same is hereby dismissed without cost to either party.

Dated this 28th day of October, 1957, at Anchorage, Alaska.

/s/ J. L. McCARREY, JR.,
District Judge.

Thereafter on the 12th day of November, 1957, the plaintiff, City of Anchorage, filed the following Notice of Appeal:

[Title of District Court and Cause.]

No. A-13,425

NOTICE OF APPEAL

To the Clerk of the District Court, Third Division,
District of Alaska: Sir:

Notice is hereby given that the City of Anchorage, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment of the District Court for the Third Division, District of Alaska, dismissing with prejudice the action of the City of Anchorage, which action was dismissed by judgment entered on October 28, 1957.

/s/ L. EUGENE WILLIAMS,
Attorney for Plaintiff, City
of Anchorage.

The foregoing constitutes the record on appeal in the above-entitled cause pursuant to Rule 76 of the Federal Rules of Civil Procedure.

/s/ L. EUGENE WILLIAMS,
Attorney for Plaintiff, City
of Anchorage, Alaska;

/s/ DONALD A. BURR,
Assistant United States Attorney, Attorney for
Defendant.

Approved as record on appeal:

[Seal] /s/ J. L. McCARREY, JR.,
District Judge.

Dated at Anchorage, Alaska, this 20th day of December, 1957.

/s/ J. L. McCARREY, JR.,
District Judge.

[Endorsed]: Filed and entered December 20, 1957.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, Wm. A. Hilton, Clerk of the above-entitled court, do hereby certify that pursuant to Rule 76 of the Federal Rules of Civil Procedure, I am transmitting herewith original statement of the case, executed by respective counsel of record, including copies of the opinion of the court, the judgment of the court and notice of appeal, approved by the judge of the above-entitled court, and followed by a statement of the points relied on by the appellant, together with photo copy of motion and order extending time to docket appeal to January 31, 1958.

The papers herewith transmitted constitute the record on appeal to the United States Court of Appeals, Ninth Circuit, San Francisco, California, from judgment filed and entered in the above-entitled court on October 28, 1957.

Dated at Anchorage, Alaska, this 20th day of January, 1958.

[Seal] /s/ WM. A. HILTON,
Clerk.

[Endorsed]: No. 15864. United States Court of Appeals for the Ninth Circuit. City of Anchorage, a Corporation, Appellant, vs. William A. Hilton, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed January 22, 1958.

Docketed: January 24, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15864

CITY OF ANCHORAGE, a Municipal Corporation,

Appellant,

vs.

WILLIAM A. HILTON,

Appellee.

ADOPTION OF STATEMENT
AND DESIGNATION

Comes Now the City of Anchorage, Appellant, by its attorney, L. Eugene Williams, pursuant to the provisions of Rule 17 (6) of the Rules of this Court, and hereby adopts for purposes of this appeal, the statement of points filed with the clerk of the trial court.

Dated this 22nd day of January, 1958.

/s/ L. EUGENE WILLIAMS,
Attorney for Appellant, City
of Anchorage.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 24, 1958.

[Title of Court of Appeals and Cause.]

No. 15864

STIPULATION

Appellant, City of Anchorage, and Appellee, William A. Hilton, acting through their attorneys, having filed an agreed statement of record on appeal, stipulate and agree that this shall be the record designated in the United States Court of Appeals for the Ninth Circuit and agree that this record may be printed as the record on appeal.

Dated this 22nd day of January, 1958.

/s/ L. EUGENE WILLIAMS,
Attorney for Appellant, City
of Anchorage;

/s/ DONALD A. BURR,
Assistant United States At-
torney, for Appellee.

[Endorsed]: Filed January 24, 1958.

